

"YELLOW"

NO PROTEST RECEIVED
Release copies to District

Date Nov. 7, 1996

Surname [REDACTED]

CP:E:EO:T:5

SEP 26 1996

Employer Identification Number: [REDACTED]
Key District: Southeast (Baltimore, MD)

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code. For the reasons stated below, we conclude that you do not qualify for tax exemption under this section. Your protest rights are also explained below.

You were incorporated on [REDACTED], on a nonprofit basis under the laws of the State of [REDACTED]. Article III of your incorporating instrument states that you are organized and operated for various exempt purposes set forth in section 501(c)(3) of the Internal Revenue Code. More specifically, however, your stated purposes are as follows:

A. To assemble owners and users of [REDACTED] software made by the [REDACTED] of [REDACTED], for the purposes of education, training and development in the use of [REDACTED] software.

B. To design, plan, create, educate, and sponsor clubs, clinics, competitions, training facilities and materials, and to produce programs to enhance the individual competency of users of [REDACTED] software.

In response to Part II, 1 of Form 1024, exemption application, in which you are asked to describe your activities, you state that you are a membership organization for owners and users of [REDACTED] software. You provide opportunities for education, training, and development in the use of [REDACTED] software. In this context, you engage in the following activities:

	Initiator	Reviewer	Reviewer	Reviewer	Reviewer
Code	CP:E:EO:T:5	CHB	PROTS		
Surname	[REDACTED]	[REDACTED]			
Date	9/25/96	9/25/96			

-2-

[REDACTED]

(1) Monthly Meetings - These meetings are open to members and nonmembers (however, nonmembers must pay to attend). The meetings provide an opportunity to exchange information on technical topics and to hear a speaker. You also hold business meetings covering administrative matters.

(2) Newsletter - You publish a monthly newsletter which is distributed to members. It contains technical articles concerning the use of [REDACTED] software.

(3) Membership - This is open to individuals and businesses. As of [REDACTED], you reported [REDACTED] individual members and [REDACTED] corporate members.

(4) Seminars - These are 3 to 5 days in length and are open to members and nonmembers who register and pay a fee. The seminars provide technical education in the use of [REDACTED] software.

(5) Bulletin Board - Members are granted access to the computer bulletin board which provides a forum for the exchange of ideas and information related to the use of [REDACTED] software.

(6) Special Events - You plan to participate in an annual computer systems exposition through sponsorship of a booth which will be staffed by volunteers.

In response to Part II,7, dealing with membership qualifications, rights, and privileges, you have submitted a flyer designed to attract new members. It begins by stating that, "The primary benefit of membership is belonging to and associating with other professionals who use [REDACTED]. This association will provide you with technical support and expertise at a very reasonable cost." The flyer then points to some of the activities outlined above. It also represents that your organization is "an excellent place for members to find new contracts or employment. The bulletin board has a 'jobs conference' which is becoming increasingly popular with the business community. In addition, [REDACTED] is a great place to market your [REDACTED]-related products."

In a letter dated [REDACTED], responsive to a development letter from our Key District Office, you advise that you were "formed for the sole purpose of allowing the members to share information regarding a programming language we all use. The language is called [REDACTED] and is the central focus of our activity." You point out, however, that,

[REDACTED]

Although the programming language is the basis of our association, we also exchange information on other topics. For example we also discuss other languages such as FoxPro, dBase, C and Pascal. We have speakers at our monthly meetings from third party vendors and presentations from the publishers of the other languages mentioned above. There are no specific requirements for our members to own any particular product or in fact that they own any product or are actively involved in programming as a profession. Some of the members are retired, some are hobbyists and others are merely interested in learning more about the subjects we discuss. There is no specific intent on the part of the group to promote the activity of any company, our intent is merely to foster the exchange of information.

In a letter dated [REDACTED], responsive to a development letter from the National Office, your new President focused on your monthly membership meetings and included a list of speakers and topics presented at your [REDACTED] meetings (plus one in [REDACTED]). He then observes that, "As you can see, our meeting topics and speaker selection do not focus on one specific product but on the common theme of database application development."

The above letter also takes issue with the statement in our development letter that, "... you provide opportunities for education, training, and development in the use of [REDACTED] software." You characterize this statement as incorrect, on the following grounds:

What the user group does provide is information to our membership on training and education opportunities relating to database application development. All of the training that our members attend is sponsored, arranged and run by professional training and education companies that have no association or affiliation to the [REDACTED]. We neither sponsor, endorse, or teach training of any type.

Your letter also disputes our statement that, " ... your meetings provide an opportunity for members to find new contracts/employment." You maintain that such opportunities "are

[REDACTED]

purely coincidental and may arise simply from the fact that the membership is made up of individuals in the common business of database application development."

Concerning the name of your organization, your President offers the following explanation:

Finally, I would like to clarify the issue of the name of our organization, [REDACTED]. At the time this group was organized, the most popular database application development tool for the MS-DOS operating system was a product called [REDACTED]. We chose to incorporate the name of this product in the name of our group in order to attract individuals participating in the business of database application development to our group. The selection of our name was neither an endorsement of the product, nor an advertisement for the product.

In Part III of your exemption application, dealing with Financial Data, you report, for your taxable year ending [REDACTED], total revenue of \$[REDACTED]. This consisted of membership dues in the amount of \$[REDACTED], exempt function income (mainly from seminars) in amount of \$[REDACTED], and miscellaneous income of \$[REDACTED]. Total expenses for the period were \$[REDACTED], of which \$[REDACTED] was attributed to activities in furtherance of exempt purposes. Net excess for the taxable period was \$[REDACTED]. Your letter of [REDACTED] provides additional details concerning the seminars, the setting of membership dues, newsletter costs, and other financial matters.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of nonprofit business leagues, chambers of commerce, and boards of trade, whose net earnings do not inure to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income tax Regulations defines a business league as an association of persons having some common business interest, the purpose of which is to promote such common business interest and not to engage in a business of a kind ordinarily carried on for profit. The regulations further require that a business league's activities be directed to the improvement of business conditions for one or more lines of business as distinguished from the performance of particular services for individual persons.

Rev. Rul 74-147, 1974-1 C.B. 136 describes a nonprofit organization formed to stimulate the development and exchange of information with respect to systems and programming of electronic data processing equipment. Its membership is made up of representative of diversified businesses who own, rent, or lease one or more digital computers, produced by various manufacturers, without regard to identify of the manufacturer. The organization holds semi-annual conferences, lasting from two to four days, at which operational and technical problems relating to computer use are discussed. Nonmembers are invited to attend and are encouraged to join. The organization does not provide counseling or other services to its members with respect to specific individual problems. The organization is supported by conference registration fees.

Rev. Rul 74-147 cites Code section 501(c)(6), section 1.501(c)(6)-1 of the regulations and Rev. Rul. 65-164, 1.65-1 C.B. 238, and the decision in the case of Associated Industries of Cleveland v. Commissioner, 7 T.C. 1449 (1946), acq. 1947 C.B.1, cited therein, which holds that organizations dealing with common business interests which are the business problems the members have in common qualify for exemption under section 501(c)(6).

With respect to the organization depicted, Rev. Rul 74-147 comments:

"Here, the common business interest of the members... is their common business problem concerning the use of digital computers. The primary objective of the organization is to provide a forum for the exchange of information which will lead to the more efficient utilization of computers by its members and other interested users, and thus improve the overall efficiency of the business operations of each."

Held, the above organization qualifies for exemption under IRC 501(c)(6).

The organization described in Rev. Rul. 74-147 may be contrasted to the one described in Rev. Rul. 83-164, 1983-2 C.B. 95. The latter organization was formed to develop and disseminate information pertaining to the electronic data processing equipment manufactured by the M corporation. Its membership is made up primarily of representatives of diversified businesses that own, rent, or lease one or more computers produced by M. Membership is also open to representatives of other businesses that do not use M's computers. The organization holds conferences at which operational and technical problems relating to computer use are discussed. The organization is supported by income from conference registration fees.

[REDACTED]

In holding that the above organization does not qualify for exemption under section 501(c)(6), Rev. Rul. 83-164 sets forth the following rationale:

Organizations that have failed to meet the line of business test but instead were found to have served only a "segment of a line" include groups composed of businesses that have licenses to a single patented product (Rev. Rul. 58-294, 1958-1 C.B. 244); market a certain make of automobile (Rev. Rul. 67-77, 1967-1 C.B. 138); or bottle one type of soft drink (Rev. Rul. 68-182, 1968-1 C.B. 263). These groups promote segments of an industry at the expense of others in the industry.

Although the members of both the organization described in Rev. Rul. 74-147 and the organization under consideration here have a common business interest concerning the use of computers, the organization in Rev. Rul. 74-147 directs its activities to users of computers made by diverse and competing manufacturers, while the instant organization directs its activities to users of computers made by one manufacturer. By directing its activities only to the users of brand M computers, the instant organization is directing its activities towards the improvement of business conditions in only segments of the various lines of business to which its members belong. Because it limits its activities to the users of M computers, the organization helps to provide a competitive advantage to M and to its customers at the expense of M's competitors and their customers that may use other brands of computers. Thus, the organization's activities are not directed towards the improvement of business conditions in one or more lines of business within the meaning of section 1.5019c)(6)-1 of the regulations.

With respect to your own application, the evidence in the administrative file clearly indicates that you are organized and operated to provide technical assistance for users of [REDACTED] software. This is reflected in the language of your articles setting forth your specific purposes and in your response to part II, 1 of Form 1024. The statements therein clearly show that your newsletter, your seminars, and your bulletin board are all oriented toward information relating to the use of [REDACTED] software. As indicated in your letters of [REDACTED], and [REDACTED], you maintain that your activities, particularly the topics presented at your monthly meetings, do not focus on one specific product. Nevertheless, the information submitted with your original application points otherwise. Thus, we believe that the holding in Rev. Rul. 83-164, as discussed above, is fully applicable to your own application. See also the three revenue rulings cited therein. Accordingly, we conclude that your activities tend to promote a segment of the computer software industry, i.e., [REDACTED] products, as opposed to the industry as a whole.

"YELLOW"

-7-

Aside from the foregoing problem, you also provide "particular services" to members in the form of job opportunities and marketing of products. This is clearly evidenced by the statement in your flyer (cited above) describing your bulletin board as a "jobs conference" and your organization as a "great place to market your [REDACTED] related products." The provision of particular services to members or other individuals is a disqualifying factor for exemption under Code section 501(c)(6); see section 1.501(c)(6)-1 of the regulations.

Based on the foregoing, we hold that you do not qualify for exemption from federal income tax under section 501(c)(6) of the Code. Accordingly, you are required to file federal income tax returns on Form 1120.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practice Procedures.

If we do not hear from you within 30 days, this ruling will become final and copies will be forwarded to your key District Director, Southeast (Baltimore, MD), which is your key district for exempt organization matters. Thereafter, if you have any questions about your federal income tax status, including questions concerning reporting requirements, please contact your key District Director.

When sending a protest or other correspondence with respect to this case, you will expedite its receipts by using the following address on the envelope:

Internal Revenue Service
Attn: CP:E:EO:T:5, Room 6539
1111 Constitution Avenue, NW
Washington, DC 20224

Sincerely,
(signed) [REDACTED]

[REDACTED]
Chief, Exempt Organizations
Technical Branch 5

"YELLOW"

cc: DD, Southeast (Baltimore, MD)
Attn: EO Group
w/administrative file